

Message Text

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ACTION ARA-14

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E.O. 11652: N/A
TAGS: PINT, EC
SUBJECT: MILITARY CLAIMS RIGHT TO UNIFORMED MINISTER OF
DEFENSE IN NEW GOVERNMENT

1. BEGIN SUMMARY: IN A MOVE HOTLY PROTESTED BY CIVILIAN
POLITICIANS THE GOE HAS PASSED A DECREE PROVIDING THAT THE
MINISTER OF DEFENSE MUST BE THE ACTIVE SENIOR MILITARY OFFICER.
ALL CIVILIAN POLITICIANS ARE IN AGREEMENT THAT SUCH A LAW
CONTRADICTS THE NEWLY-ADOPTED CONSTITUTION AND APPEAR WILLING
TO CONFRONT THE GOE IN THIS ISSUE. THIS APPEARS TO BE ANOTHER IN
A SERIES OF ATTEMPTS BY THE MILITARY TO DETERMINE IN ADVANCE
THE CHARACTER OF THE CIVILIAN GOVERNMENT TO BE ELECTED IN
JULY. END SUMMARY.

2. A FUTURE CONSTITUTIONAL CONFRONTATION BETWEEN THE INCOMING
CIVILIAN PRESIDENT AND THE MILITARY WAS PRESAGED WHEN THE
GOE ANNOUNCED ON MAY 29 THAT IT HAD AMENDED THE ORGANIC LAW
OF THE ARMED FORCES TO REQUIRE THAT FUTURE MINISTERS OF DEFENSE
BE THE SENIOR GENERAL OR FLAG OFFICER ON ACTIVE DUTY.

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3. ON MAY 31, MOST PAPERS CARRIED HEADLINES QUOTING
LIBERAL PRESIDENTIAL CANDIDATE RAUL CLEMENTE HUERTA AND
DEMOCRATIC LEFT DIRECTOR GONZALO CORDOVA GALARZA TO
THE EFFECT THAT THE NEW SUPREME DECREE IS UNACCEPTABLE
BECAUSE IT WOULD MODIFY THE NEW CONSTITUTION. LATER
THAT DAY CFP CANDIDATE JAIME ROLDOS AND VELASQUISTA
LEADER CARLOS CORNEJO ALSO SCORED THE MANEUVER. ALL

BASED THEIR ARGUMENT ON A CONSTITUTIONAL PROVISION GIVING THE PRESIDENT POWER TO HIRE AND FIRE MINISTERS, CLAIMING THAT THE MILITARY STATUTE IS SUBORDINATE TO THE CONSTITUTION. THIS VIEW SEEMS TO BE SHARED BY ALL BUT THE MILITARY.

4. IN RESPONSE TO THE CRITICISM, ON MAY 31, SECRETARY GENERAL FOR ADMINISTRATION REAR ADMIRAL VICTOR HUGO GARCES HELD A PRESS CONFERENCE IN WHICH HE DEFENDED THE GOE'S ACTION. GARCES' EMPLOYED SOME VERY TORTUOUS LOGIC IN HIS JUSTIFICATION, CLAIMING THAT THE CONSTITUTION GIVES THE PRESIDENT THE POWER TO NAME AND FIRE MINISTERS "IN ACCORDANCE WITH THE LAW". THEREFORE, HE SAID, THE ORGANIC LAW OF THE ARMED FORCES CAN LIMIT THE PRESIDENT'S POWER TO NAME THE MINISTER OF DEFENSE BY, IN EFFECT, DESCRIBING THE CHARACTERISTICS OF THE PERSON THE PRESIDENT MUST NAME AS MINISTER. GARCES CLAIMED THAT THE PROVISION WAS SIMILAR TO PREVIOUS STIPULATIONS IN THE ORGANIC LAW WHICH HELD THAT THE HIGHEST MILITARY POSITION IN THE COUNTRY SHOULD BE HELD BY THE HIGHEST RANKING OFFICER.

5. COMMENT: THIS IS THE MOST RECENT MANIFESTATION OF EFFORTS BY THE MILITARY TO ATTEMPT TO LEGISLATE OR OTHERWISE DETERMINE IN ADVANCE SOME CHARACTERISTICS OF THE CIVILIAN GOVERNMENT WHICH WILL TAKE POWER LATER THIS YEAR. ONE OTHER EXAMPLE WAS THE GOE'S SUCCESSFUL ATTEMPT TO PACK THE SUPREME COURT THAT TOOK PLACE IN LIMITED OFFICIAL USE

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DECEMBER. ACCORDING TO THE NEW CONSTITUTION, ONLY CONGRESS WILL BE ABLE TO NAME NEW SUPREME COURT JUSTICES AND CONGRESS MAY NOT BE ABLE TO BE CONVOKED UNTIL AUGUST 1978 ACCORDING TO ONE CONSTITUTIONAL INTERPRETATION. IN ADDITION, THE GOE RECENTLY ANNOUNCED THAT ONLY HALF OF THE COUNCILLORS WOULD BE ELECTED IN THE MUNICIPAL AND PROVINCIAL COUNCIL ELECTIONS. PURPORTEDLY IN ORDER TO PROVIDE FOR CONTINUITY, HALF OF THE PRESENT MILITARY-APPOINTED COUNCILLORS (CHOSEN BY LOT) WILL REMAIN IN OFFICE UNTIL NEXT YEAR.

6. THE MILITARY PRESUMABLY INTENDS TO LEAVE ITSELF WITH INFLUENCE IN THE NEW GOVERNMENT TO MAKE CERTAIN IT FOLLOWS ACCEPTABLE POLICIES. A TAME SUPREME COURT WOULD CERTAINLY SERVE THIS PURPOSE. MILITARY LEADERS ALSO SEEM INTENT ON LEAVING NO ROOM FOR ANTI-MILITARY INITIATIVES BY THE NEW GOVERNMENT. THE STRANGE THING IS THAT IT IS NOT CLEAR WHY THEY FEEL THEY HAVE TO RESORT TO SUCH BIZZARE STRATEGEMS SINCE THEY SEEM TO BE WELL INSULATED ON BOTH ACCOUNTS. WE UNDERSTAND, FOR INSTANCE, THAT BOTH FRONT-RUNNING CANDIDATES, SIXTO DURAN-BALLEN AND RAUL CLEMENTE HUERTA, WERE ALREADY WELL-DISPOSED TO NAME

VICE ADMIRAL RENAN OLMEDO AS MINISTER OF DEFENSE. OLMEDO IS THE RANKING OFFICER AFTER THE TRIUMVIRATE, ALL OF WHOM ARE EXPECTED TO RETIRE AFTER THE NEW PRESIDENT IS INAUGURATED. SIMILARLY, ALL CANDIDATES WITH A POSSIBILITY OF WINNING HAVE REPEATED THEIR ASSURANCES (AND, WE ASSUME, REINFORCED THOSE ASSURANCES PRIVATELY) TO THE MILITARY THAT THEY WILL NOT ENGAGE IN WITCH-HUNTING IF ELECTED.

7. SINCE THE PROVISION IS INCLUDED IN AN ORDINARY LAW, PRESUMABLY THE INCOMING PRESIDNET, WHO WILL HAVE LEGISLATIVE DECREE POWERS UNTIL THE CONVOCAION OF CONGRESS, COULD RESORT TO CHANGING THE LAW IN THE MORNING AND NAMING WHOMEVER HE WANTS AS MINISTER OF DEFENSE IN THE AFTERNOON. HOWEVER, SUCH A MOVE WOULD RESULT IN LIMITED OFFICIAL USE

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CREATING FRICTION BETWEEN THE MILITARY AND THE CIVILIAN EXECUTIVE RIGHT OFF THE BAT. THE SUPREME COURT MIGHT THEN ALSO DEMONSTRATE ITS LOYALTY TO THE MILITARY BY OVERTURNING THE PRESIDENTIAL ACTION.
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